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APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/438,104 11/10/1999		11/10/1999	ASGEIR SAEBO	CONLINCO-040	8881
23535	7590	04/13/2006	e.	EXAMINER	
MEDLEN		•		JONES, DV	VAYNE C
101 HOWA SUITE 350	RD STRE	ET .	ART UNIT	PAPER NUMBER	
SAN FRAN	CISCO, (CA 94105		1614	

Please find below and/or attached an Office communication concerning this application or proceeding.

·		Application No.	Applicant(s)		
		09/438,104	SAEBO ET AL.		
	Office Action Summary	Examiner	Art Unit		
		Dwayne C. Jones	1614		
Period fo	The MAILING DATE of this communication app		orrespondence address		
A SHO WHIC - Exter after - If NO - Failur Any r	ORTENED STATUTORY PERIOD FOR REPLY CHEVER IS LONGER, FROM THE MAILING DATES as ions of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. Period for reply is specified above, the maximum statutory period were to reply within the set or extended period for reply will, by statute, eply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim rill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	I. nely filed the mailing date of this communication. D (35 U.S.C. § 133).		
Status					
2a)⊠	Responsive to communication(s) filed on <u>26JA</u> . This action is FINAL . 2b) This Since this application is in condition for allowar closed in accordance with the practice under E	action is non-final. nce except for formal matters, pro	secution as to the merits is		
Dispositi	on of Claims				
5)□ 6)⊠ 7)□	Claim(s) 7-24 is/are pending in the application. 4a) Of the above claim(s) is/are withdrav Claim(s) is/are allowed. Claim(s) 7-24 is/are rejected. Claim(s) is/are objected to. Claim(s) are subject to restriction and/or	vn from consideration.			
Applicati	on Papers				
10)	The specification is objected to by the Examine The drawing(s) filed on is/are: a) access Applicant may not request that any objection to the Replacement drawing sheet(s) including the correction to the oath or declaration is objected to by the Examine.	epted or b) objected to by the Eddrawing(s) be held in abeyance. See ion is required if the drawing(s) is obj	e 37 CFR 1.85(a). lected to. See 37 CFR 1.121(d).		
Priority u	ınder 35 U.S.C. § 119				
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 					
2) Notic 3) Inform	t(s) e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) r No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:			

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DETAILED ACTION

Status of Claims

- Claims 7-24 are pending.
- 2. Claims 7-24 are rejected.

Response to Arguments

3. Applicant's arguments and declaration filed January 26, 2006 have been fully considered but they are not persuasive with respect to the provisional rejections under the judicially created doctrine of obviousness-type double patenting.

Claim Rejections - 35 USC § 103

4. The rejection of claims 7-24 under 35 U.S.C. 103(a) as being unpatentable over Cain et al. of WO 97/18320 is withdrawn.

Allowable Subject Matter

5. The following is a statement of reasons for the indication of allowable subject matter: the instant claims are free of the prior art of Cain et al. in view of the decision by the Board of Patent Appeals and Interferences, which was mailed on August 30, 2005, for copending application 09/132,593. In addition, the Saebo Declaration shows that other isomers besides the c9, t11- and t10, c12-octadecadienoic acids were necessarily present in the Cain et al. example. The skilled artisan is not provided with motivation to have a composition of at least 50% c9, t11- and t10, c12-octadecadienoic acid and additional has less than 1% of content of 8,10- and 11,13-octadecadienoic acid isomers.

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Obviousness-type Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- The provisional rejection of claims 8, 9, 11, 12, 14, 15, 17, 18, 20, 21, and 22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/623,825 is maintained and repeated. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant invention and copending Application No. 10/623,825 teach of esters and triglycerides of octadecadienoic acids that have c9, t11- and t10, c12-octadecadienoic acid contents greater than 50% and a content of 8,10- and 11,13-octadecadienoic acid isomers less than 5%, which embraces the instantly claimed 1%.
- 8. This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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9. The provisional rejection of claims 7-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 and 8 of copending Application No. 09/132,593 is maintained and repeated. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant invention and copending Application No. 09/132,593 teach of esters and triglycerides of compositions of octadecadienoic acids that have c9,t11- and t10,c12-octadecadienoic acid contents greater than 50% and a content of 8,10- and 11,13-octadecadienoic acid isomers less than 2%, which embraces the instantly required 1% limitation. In addition, copending Application No. 09/132,593 teaches of food products of these compositions.

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- 10. This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.
- 11. The provisional rejection of claims 8, 9, 11, 12, 14, 15, 17, 18, 20, 21, and 22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-8 and 13-17 of copending Application No. 09/271,024 is maintained and repeated. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant invention as well as copending Application No. 09/271,024 teach of composition of esters and glycerides of octadecadienoic acid that have contents of at least 30% c9,t11- and t11,c12- octadecadienoic acid and less 1% of 8,10- and 11,13 octadecadienoic acids. In addition, copending Application No. 09/271,024 593 teaches of food products of these compositions.

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12. This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (571) 272-0578. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, and Fridays from 8:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, may be reached at (571) 272-0951. The official fax No. for correspondence is (571)-273-8300.

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Also, please note that U.S. patents and U.S. patent application publications are no longer supplied with Office actions. Accordingly, the <u>cited U.S.</u> patents and patent application publications are available for download via the Office's PAIR, see http://pair-direct.uspto.gov. As an alternate source, <u>all U.S. patents and patent application</u> publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources.

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PRIMARY EXAMINER

Tech. Ctr. 1614

April 11, 2005